

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA,

:
Plaintiff,

:
vs.

Case No. 3:05cv090

\$80,048.00 (EIGHTY THOUSAND
FORTY EIGHT DOLLARS) IN
UNITED STATES CURRENCY,

:
JUDGE WALTER HERBERT RICE

:
Defendant.

DECISION AND ENTRY SUSTAINING GOVERNMENT'S UNOPPOSED
MOTION TO DISMISS CLAIM OR, IN THE ALTERNATIVE, MOTION
FOR SUMMARY JUDGMENT (DOC. #12), TREATED AS A MOTION
FOR SUMMARY JUDGMENT; DECREE OF FORFEITURE IN FAVOR OF
THE GOVERNMENT, FORFEITING THE SUM OF \$80,048.00 IN
UNITED STATES CURRENCY TO THE GOVERNMENT; TERMINATION
ENTRY

Based upon the reasoning and citations of authority set forth in the
Memorandum in support of the Government's unopposed Motion to Dismiss the
claim of Christopher T. Kirk or, in the alternative, Motion for Summary Judgment
(Doc. #12), as well as upon a thorough *de novo* review of this Court's file and the
applicable law, said Motion, treated as a Motion for Summary Judgment, is
sustained. A Decree of Forfeiture will be entered in favor of the Government and
against the Defendant, forfeiting the sum of \$80,048.00 to the Government.

By way of essential background, a review of this Court's file indicates that counsel of record sought leave to withdraw as counsel on March 17, 2006 (Doc. #11), which leave was granted, along with a 60-day stay of proceedings to allow Claimant to secure successor counsel, on May 22, 2006 (Doc. #13). The Claimant was sent a copy of the Decision and Entry granting leave for his counsel to withdraw and granting a 60-day stay of proceedings; however, although addressed to Claimant's last known address, said correspondence was returned as "Refused-Unable to Forward," on June 13, 2006 (Doc. #13). Since that date, this Court has heard nothing from the Claimant. Nor has the Claimant responded to the Government's discovery requests. Although construing the Government's Motion as one for summary judgment, the Court would have been justified in treating same as a motion to dismiss and granting same, based upon the Claimant's failure to respond to the Government's discovery requests.

WHEREFORE, based upon the aforesaid, this Court orders the entry of summary judgment in favor of the Government and against Defendant herein. A Decree of Forfeiture will issue, forfeiting the sum of \$80,048.00 in United States currency to the Government.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

/s/ Walter Herbert Rice

March 30, 2007

WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

Copies to:

Pamela Stanek, Esq.
Christopher T. Kirk